Nos. 17-765 and 17-766

IN THE

Supreme Court of the United States

UNITED STATES OF AMERICA,
Petitioner,
v.
VICTOR J. STITT,
Respondent.

UNITED STATES OF AMERICA,
Petitioner,
v.
JASON DANIEL SIMS,
Respondent.

On Writs of Certiorari to the United States Courts of Appeals for the Sixth and Eighth Circuits

RESPONDENTS' JOINT MOTION FOR DIVIDED ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, respondent Victor J. Stitt ("Stitt") and respondent Jason Daniel Sims ("Sims") respectfully move for divided argument in this case. Each respondent requests 15 minutes of argument time, with counsel for respondent Stitt to appear first and counsel for respondent Sims to appear second. This division of argument time will ensure that each respondent has his interests adequately represented and his arguments fully conveyed by counsel, and that the Court receives a full understanding of the distinct issues raised by respondents. Petitioner has no objection to this motion.

1. This Court has consolidated these two cases for briefing and argument. Both involve the meaning of the term "burglary" for purposes of the Armed Career Criminal Act, 18 U.S.C. § 924(e)(2)(B)(ii) ("the ACCA"). But each case is a separate and distinct prosecution, involving not only different defendants, but also having been litigated below in different jurisdictions.

2. More important, each case concerns whether a distinct state statute qualifies as "burglary" under the ACCA. To make such determinations, this Court applies the "categorical approach." *Taylor v. United States*, 495 U.S. 575, 600 (1990). Under that approach, the Court compares "the statutory definition" of the state crime of conviction to the "generic" form of burglary referenced in the ACCA. *Id.* at 602. Yet the statutory definitions in *Stitt* and *Sims* are different. As is relevant here, the statute at issue in *Stitt* covers invasions of vehicles "designed or adapted for the overnight accommodation of persons" *and "each structure appurtenant to or connected with the . . . vehicle."* Tenn. Code Ann. § 39-14-401 (emphasis added). The statute at issue in *Sims* covers invasions of vehicles "customarily used for overnight accommodation of a person" *or "[i]in which any person lives."* Ark. Code Ann. § 5-39-101(4)(A) (emphasis added).

3. Partly for this reason, Stitt and Sims advance materially different arguments with respect to whether their relevant prior convictions qualify as "generic" burglary. *See* Stitt Resp. Br. at 33-35 (arguing that the Tennessee statute is broader than generic burglary because it covers places that are appurtenant to or connected with a structure or vehicle); Sims Resp. Br. at 25-41 (arguing that the

Arkansas statute is broader than generic burglary because it applies to vehicles not adapted for lodging). Counsel for each respondent will be in the best position to explain and expand upon those distinct arguments.

4. Finally, it bears stressing that a litigant's interest in being represented by counsel of choice is at its zenith in the context of criminal prosecutions. *Cf. United States v. Gonzalez-Lopez*, 548 U.S. 140 (2006). This Court, therefore, has regularly allowed divided argument in situations comparable to this one. *See, e.g., Turner v. United States*, 137 S. Ct. 1885 (2017) (Nos. 15-1503 & 15-1504); *Abbott v. United States*, 562 U.S. 8 (2010) (Nos. 09-479 & 09-7073). This Court has similarly allowed divided argument when multiple parties faced other types of governmental action involving their liberty or property. *See, e.g., Holder v. Martinez Gutierrez*, 566 U.S. 583 (2012) (Nos. 10-1542 & 10-1543); *Shinseki v. Sanders*, 556 U.S. 396 (2009) (No. 07-1209); *Burlington No. & Santa Fe Ry. Co. v. United States*, 556 U.S. 599 (2009) (Nos. 07-1601 & 07-1607).

5. For the foregoing reasons, both respondents' participation in oral argument would be of material assistance to this Court. Respondents therefore jointly request that the Court divide oral argument time equally between counsel for respondent Stitt and counsel for respondent Sims, to proceed in that order.

Respectfully submitted,

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